In the Court below the landlord claimed possession under section 14(1)(i) and (m) of the Control of Rent Ordinance, 1947. The learned District Judge negatived these grounds but held that Ordinance did not apply, as the property in question was not "premises" within the meaning of the definition.

A preliminary objection was taken that no appeal lay on the ground that there was nothing on record to show that the value of the subject matter exceeded $100.

Held that in order that the demised property may be brought within the definition of "premises" whatever has been erected must have been erected with the consent of the landlord at the time of the erection and where there is no direct evidence and a dwelling house had had been built for many years the consent of the landlord must be presumed.

Held further that there is either appeal or revision in every case and if the Court did not exercise the powers by way of appeal it would do so by way of revision.

Case referred to :—

(1) *A. L. M. M. Muthukaruppan Chettiar v. Haji Ibrahim* (1941) M.L.J. 150.

DISTRICT COURT APPEAL.

A. P. Rajah for he appellant.

D. S. Marshall for the respondents.

Cur. Adv. Vult.

Sir Charles Murray-Aynsley, C.J. : — This appeal concerns the recovery of property on what is known as the Siglap Estate. The property demised consists of land on which has been erected a wooden hut which is not of such a character as to form part of the freehold and which appears to be the property of the tenant. It has stood there for at least 25 years.

In the Court below the landlord claimed possession under section 14(1)(i) and (m) of the Control of Rent Ordinance, 1947. The learned District Judge negatived these grounds but held that Ordinance did not apply, as the property in question was not "premises" within the meaning of the definition.

The definition reads as follows :—

" 'Premises' means any dwelling house, flat, factory, warehouse, office, counting house, shop, school and any other building in which persons are employed or work and any part of any premises let or sublet separately and includes any land whereon any such building is or has been erected with the consent of the landlord but does not include new premises built or completed after the commencement of this Ordinance."

In the original Ordinance the definition was as follows :—

" 'Premises' means any dwelling house, flat, factory, warehouse, offices, counting house, shop, school, any other building in which persons dwell or are employed or work, and any part of any premises let or sublet separately."

The case of *A. L. M. M. Muthukaruppan Chettiar v. Haji Ibrahim*[1] was cited. There had been a demise of land and what may conveniently be called a chattel house had been erected. The landlord claimed possession of the demised land and it was held that he was entitled to recover because what was dismissed was not premises within the meaning of the then section. Of course, if the house had been demised, even though it had been a chattel, the result would have been different.

This led to an amendment (Ordinance 40 of 1940) which is as follows :—

"The expression 'premises' shall be deemed to include and as from the first day of July, 1940, to have included the land on which any moveable building falling within the definition of premises stands . . . . ."

In the present Ordinance this definition has been redrafted. The principal change is the omission of the word "moveable". I think that the only effect of the omission is to enlarge the scope of the definition by including buildings erected by the tenant which were not "moveable", often a very difficult and technical question to decide.

In order that the demised property may be brought within the definition of "premises" whatever has been erected must have been erected with the consent of the landlord, naturally the landlord at the time of erection. Here we have naturally no direct evidence but when it has been suffered for so many years we must presume it.

On the other point I do not think that a structure that is built about posts which penetrate a foot or so into the ground and which has served as a dwelling house for twenty-five years can be other than a building within the meaning of the section in question.

In the case considered above the question was not the permanence or otherwise of the structure but whether it was included in the demise.

A preliminary objection was taken that no appeal lay. This objection was based on the fact that there is nothing in the record to show that the value of the subject matter exceeded $100. It is clear that there is either appeal or revision in every case and if I did not exercise my powers by way of appeal I would do so by way of revision. In view of the rental in the present case there can be no doubt that an appeal lies.

The appeal must be allowed with costs.

Appeal allowed.

JAGDEO v. REG.

[App. Crim. Juris. (Sir Charles Murray-Aynsley, C.J.) May 7, 1952]

[Singapore — Magistrate's Appeal No. 12 of 1952]

Municipal Ordinance (Cap. 133), s. 166(1) and (3) — Structure erected unlawfully not removed after conviction — Time for imposition of additional daily penalty.

The appellant in this case was, in 1950, prosecuted and convicted for unlawful erection of the partitions in contravention of section 166(1) of the Municipal Ordinance but no daily penalty for allowing them to remain

after conviction was imposed. The partitions were not removed and the appellant was again charged under the present proceedings with allowing the partitions to remain after conviction "thereby committing a continuous offence". To this charge the appellant pleaded guilty and was sentenced to fine of $500. Against this sentence he appealed.

Held that the present proceedings were misconceived. The provision for a further penalty after conviction should, if imposed, form part of the Order on the original conviction.

By way of revision the present conviction and fine were set aside.

MAGISTRATE'S APPEAL.

K. E. Hilborne for the appellant.

A. V. Winslow (Crown Counsel) for the Crown.

Cur. Adv. Vult.

Sir Charles Murray-Aynsley, C.J. : — In this case the appellant had been convicted of an offence against section 166(1) of the Municipal Ordinance. As the offence consists of erecting, etc. it does not appear that in failing to remove the erection after conviction the appellant had committed a further offence for which he could be prosecuted subsequently. The provision for a further penalty after conviction should, if imposed, form part of the order on the original conviction.

Appeal allowed.

GUAN SENG KEE LTD.
v.
BUAN LEE SENG LTD.

[Court of Appeal (Sir Charles Murray-Aynsley, C.J. (Singapore), Mathew, C.J. (F.M.) and Brown, J.) July 15, 1952]

[Singapore — Civil Appeal No. 8 of 1952]

Landlord and tenant — Control of Rent Ordinance, 1947, s. 14 — "Tenant" — Meaning of.

On 2nd June, 1950, the plaintiffs in this case purchased from the concern known as United Engineers Ltd. the premises No. 7 Read Street, of which the tenants were at that time Messrs. Harper Gilfillan & Co., Ltd., who held a monthly tenancy.

On 8th July, 1950, the solicitors who were then acting for the plaintiffs served on Messrs. Harper Gilfillan & Co., Ltd., a Notice to Quit to take effect on 31st August, 1950, and on that latter date Messrs. Harper Gilfillan wrote to the plaintiffs' solicitors confirming that they were giving up their tenancy forthwith. Meantime Messrs. Harper Gilfillan had sublet the said premises to the present defendants as far back as 1st January 1947. For the purposes of this case there was no prohibition against sub-letting. The defendants have been and still are in possession of the premises as from the time of the sublease. The plaintiffs now bring this action to recover possession from the defendants. The defendants rely on the provisions of the Control of Rent Ordinance, 1947.

Held by the trial Judge that the defendants were tenants and as such entitled to the protection of section 14 of the Control of Rent Ordinance. **Held** further that when the interest of Messrs. Harper Gilfillan & Co., Ltd. ceased as from August 31, 1950, their lawful tenants, the present defendants began to hold as tenants immediately from the head landlords.

The plaintiffs appealed.

Held on appeal, affirming the decision of the learned trial Judge, that the protection of the Control of Rent Ordinance does extend to sub-tenants where the subletting was not unlawful.

Case referred to :—

(1) *Fernandez v. Murugiah* (1950) M.L.J. 83.

COURT OF APPEAL.

N. L. Macassey for the appellants.

J. L. P. Harris for the respondent.

Cur. Adv. Vult.

Rogers, J. [as trial Judge, after giving the facts as stated in the headnotes, continued] : — It is common ground between the parties that section 15 of the Ordinance does not apply, and the defendants look to the provisions of section 16(a), which constitute them as statutory tenants subject to their remaining in possession after the determination of their tenancy, and to their not being in a position to be deprived of such possession by reason of the provisions of the Ordinance.

It was laid down by the learned Chief Justice in the case of *Fernandez v. Murugiah*[1] that such protection is to be found in section 14, and for the landlord to be in a position to recover possession he must bring his case within one of the exceptions therein set out. It has been argued by Mr. Macassey however, that the defendants cannot rely on section 14 as the premises are not comprised in a tenancy. The tenants Harper Gilfillan & Co. he alleged had given up their contractural tenancy and were no longer in possession. The definition of the word "tenant" in section 2 of the Ordinance includes in the case of a sub-tenancy a sub-tenant to whom the premises or any part thereof is sub-let. I therefore come to the conclusion for the purposes of this case that the defendants were tenants and as such entitled to the protection of section 14. I further hold that when the interest of Messrs. Harper Gilfillan ceased as from 31st August, 1950, their lawful sub-tenants, the present defendants began to hold as tenants immediately from the head landlords. This being so, the plaintiffs are unable to bring themselves under exception 14(1)(i), as their new tenants are in possession, and I can find no other facts present which would justify me in holding that the defendants were disentitled to the protection of the section as from the 31st August, 1950.

Judgment for defendants with costs on the higher scale.

From the above judgment the plaintiffs appealed.